

567—218.12(455D) Abatement cost recovery. The abatement fund may be reimbursed through the recovery of expenses and cost-share mechanisms described in this rule.

218.12(1) *Recovery of expenses.* Pursuant to rules 218.10(455D) and 218.11(455D), the department may bring an action or proceeding to recover any reasonable and necessary expenses incurred by the department for stockpile abatement activities. The department may ask the attorney general to initiate a civil action to recover such expenses. The department's certification of expenses shall be prima facie evidence that the expenses are reasonable and necessary. In general, the department will consider that the person or persons who were the subject of an abatement action conducted by the department under this chapter to be responsible for repaying the department for the full costs of the abatement.

218.12(2) *Owner or operator cost share for abatement activities.* Pursuant to rules 218.10(455D) and 218.11(455D), the department may include cost-share or repayment provisions in letters of agreement, contracts, or other legal instruments associated with the department's stockpile abatement actions.

218.12(3) *Cost recovery determination factors.* In its determination whether to initiate actions or proceedings for recovery of expenses, and in determining the extent of expenses subject to recovery or cost sharing by the applicable parties, the department may consider the following factors:

- a. The total actual cost or estimated cost of the abatement action.
- b. Whether the owner or operator responsible for the nuisance received compensation for the collection, transportation or storage of the waste tires.
- c. Whether the owner or operator responsible for the nuisance has paid or is paying a portion of the costs to abate the nuisance.
- d. Whether the owner or operator responsible for the nuisance is financially able to pay a portion of the costs to abate the nuisance. This determination may be based upon the submittal of state and federal tax returns for the past three years, statement of net worth, and similar documentation.
- e. Whether the person responsible for the nuisance is the owner of the property where the stockpile is located.
- f. Whether the owner of the property received compensation for the waste tires received at the stockpile site.
- g. Whether the owner or operator responsible for the nuisance knowingly violated rules or statutes relating to waste tires.

218.12(4) *Abatement fund reimbursement.* Any money from the abatement fund expended by the department for costs related to stockpile abatement activities and later recovered by the department through the mechanisms described in this rule shall be credited to the abatement fund.